

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SEAN BAUER,

Plaintiff.

v.

IVEST 360, LLC, et al.,

Defendants.

CIVIL ACTION

No. 17-1030

ORDER

AND NOW, this 16th day of April 2018, it is **ORDERED** that a teleconference regarding the attached letter will be held on **Wednesday April 18, 2018, at 10 a.m.** Chambers will initiate the call.


ANITA B. BRODY, J.

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REBMANN MAXWELL & HIPPEL LLP

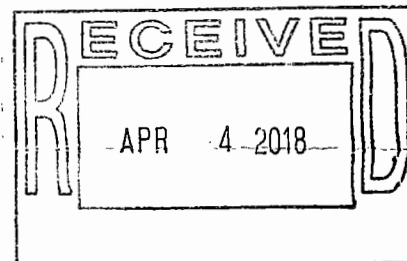
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April 3, 2018

Honorable Anita B. Brody
Room 7613
United States Courthouse
601 Market Street
Philadelphia, PA 19106



Re: ***Bauer v. Ivest 360, LLC, et al.***
E.D.Pa. Civil Action No. 17-CV-1030

Dear Judge Brody:

We write on behalf of all parties to advise the Court of recent developments regarding this matter.

On September 12, 2017, this Court entered an order staying all proceedings pending a decision by the Court of Appeals for the D.C. Circuit in *ACA International v. Federal Communications Commission*, Case No. 15-1211 (D.C. Cir. 2015), which at that time was awaiting decision, and which addressed several issues of statutory interpretation that are relevant to the present matter. A copy of the stay order is enclosed for Your Honor's convenience. Among other issues, *ACA International* challenged the Federal Communications Commission's 2015 Declaratory Ruling and Order which interpreted the terms "automatic telephone dialing system" or "autodialer" used in the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and provided guidance as to the types of calling equipment that fall within the restrictions of the TCPA. See, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 30 FCC Rcd. 7961, 2015 FCC LEXIS 1586, 2015 FCC LEXIS 1586 (2015).

Pursuant to the requirements of the stay order, we wish to notify Your Honor that on March 16, 2018, the Court of Appeals issued its decision, reported at 2018 U.S. App. LEXIS 6535. Insofar as relevant to the present case, the Court of Appeals vacated the Commission's 2015 Declaratory Ruling and Order, and held that "the Commission's ruling, in describing the functions a [telephone calling] device must perform to qualify as an autodialer, fails to satisfy the requirement of reasoned decisionmaking. . . . We must therefore set aside the Commission's treatment of those matters." 2018 U.S. App. LEXIS at *37-38.

Honorable Anita B. Brody

April 3, 2018

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6535. Insofar as relevant to the present case, the Court of Appeals vacated the Commission's 2015 Declaratory Ruling and Order, and held that "the Commission's ruling, in describing the functions a [telephone calling] device must perform to qualify as an autodialer, fails to satisfy the requirement of reasoned decisionmaking. . . . We must therefore set aside the Commission's treatment of those matters." 2018 U.S. App. LEXIS at *37-38.

Regardless of its effect on the substantive legal issues in the present litigation, the Court of Appeals' decision in *ACA International* raises several questions: (1) whether the stay order should be extended to allow for the possibility that a petition for rehearing might be filed and granted by the Court of Appeals; (2) whether the stay order should be extended to allow for the possibility that a petition for certiorari might be filed and granted by the United States Supreme Court; and (3) if the stay order is not extended, how the Amended Scheduling Order issued on April 27, 2017 should be revised to provide a new timetable for completion of discovery and pretrial motions.

We believe that a status conference to consider these issues would be helpful, and we are available at the Court's convenience.

Respectfully,



Michael F. Eichert

Counsel for Defendants

w/Enclosure

cc: Arkady "Eric" Rayz, Esquire

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

SEAN BAUER, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

v.

Civil Action
No. 17-cv-01030-AB

IVEST 360, LLC d/b/a FAST CAPITAL 360,
FAST CAPITAL 360, IVEST 360
SYNDICATION GROUP, INC. d/b/a FAST
CAPITAL 360; and DOES 1 through 10,
inclusive,

Defendants.

ORDER

AND NOW, this 12th day of September 2017, upon

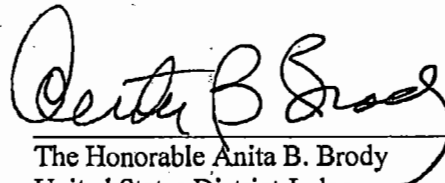
consideration of Defendants' Motion to Stay Proceedings Pending Ruling by the D.C. Circuit

Court of Appeals, it is hereby **ORDERED** that the Motion is **GRANTED**.

It is **FURTHER ORDERED** that:

A. The above-captioned matter is **STAYED**;

B. Within fourteen (14) days of the D.C. Circuit Court of Appeals' ruling in
ACA International v. Federal Communications Commission, Case No. 15-1211 (D.C. Cir.
2015), the parties shall notify the Court in writing that the proceedings in the D.C. Circuit
Court are concluded.


The Honorable Anita B. Brody
United States District Judge

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